STATE OF MICHIGAN

COURT OF APPEALS

KATHRYN HADDEN, Plaintiff-Appellee,	FOR PUBLICATION January 12, 2010
v	No. 286474 Genesee Circuit Court
MCDERMITT APARTMENTS, LLC, Defendant-Appellant.	LC No. 07-087100-NO Advance Sheets Version

Before: Murphy, P.J., and Meter and Beckering, JJ.

METER, J. (*dissenting*).

I conclude that *Allison v AEW Capital Mgt, LLP*, 481 Mich 419; 751 NW2d 8 (2008), controls the outcome in this case and mandates that defendant be granted summary disposition. Accordingly, I respectfully dissent.

As noted by the majority, the only issue in this case involves the application of MCL 554.139(1)(a), which requires a landlord to ensure that common areas on leased premises are "fit for the use intended by the parties."

The Supreme Court in *Allison*, 481 Mich at 438, indicated that an accumulation of snow and ice can, in certain circumstances, implicate a landlord's duty to keep common areas fit for the use intended. However, the circumstances in *Allison* were not so egregious as to implicate the duty. *Id*. at 430. The Court stated:

> Plaintiff's allegation of unfitness was supported only by two facts: that the lot was covered with one to two inches of snow and that plaintiff fell. Under the facts presented in this record, we believe that there could not be reasonable differences of opinion regarding the fact that tenants were able to enter and exit the parking lot, to park their vehicles therein, and to access those vehicles. Accordingly, plaintiff has not established that tenants were unable to use the parking lot for its intended purpose, and his claim fails as a matter of law.
>
> While a lessor may have some duty under MCL 554.139(1)(a) with regard to the accumulation of snow and ice in a parking lot, it would be triggered only under much more exigent circumstances than those obtaining in this case. The statute does not require a lessor to maintain a lot in an ideal condition or in the most accessible condition possible, but merely requires the lessor to maintain it in

> a condition that renders it fit for use as a parking lot. Mere inconvenience of access, or the need to remove snow and ice from parked cars, will not defeat the characterization of a lot as being fit for its intended purposes. [*Allison*, 481 Mich at 430.]

I simply cannot find this case materially distinguishable from *Allison*. First, as noted by the majority, the principles from *Allison* apply not just to parking lots but to all common areas on leased premises, including the stairway at issue here. Second, plaintiff's assertion of unfitness was based on alleged facts similar to those set forth in *Allison*, i.e., she relied solely on the alleged facts that the stairs were icy and that she fell.

Finally, like the parking lot in *Allison*, the stairway here was suitable for its intended use. The *Allison* Court stated that "[a] parking lot is generally considered suitable for the parking of vehicles as long as the tenants are able to park their vehicles in the lot and have reasonable access to their vehicles." *Id*. at 429. The Court added:

> A lessor's obligation under MCL 554.139(1)(a) with regard to the accumulation of snow and ice concomitantly would commonly be to ensure that the entrance to, and the exit from, the lot is clear, that vehicles can access parking spaces, and that tenants have reasonable access to their parked vehicles. Fulfilling this obligation would allow the lot to be used as the parties intended it to be used. [*Allison*, 481 Mich at 429.]

The Court ultimately concluded:

> We recognize that tenants must walk across a parking lot in order to access their vehicles. However, plaintiff did not show that the condition of the parking lot in this case precluded access to his vehicle. The Court of Appeals erred in concluding that, under the facts presented, the parking lot in this case was unfit simply because it was covered in snow and ice. [*Id*. at 430.]

Similarly, plaintiff in this case did not show that the condition of the stairway precluded her ability to use the stairway to access different levels of the building. Unlike the plaintiff in *Allison*, who fell on his first encounter with the parking lot, plaintiff in this case had already successfully negotiated the steps, not just one other time but *three* times, having encountered the same icy condition the previous day. The stairway was not rendered unfit for its purpose simply because of the presence of some amount of ice that required a careful navigation of the steps.

In my opinion, the present case is not materially distinguishable from *Allison* and I therefore conclude that defendant was entitled to summary disposition.[1]

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[1] I reject the majority's indication that *Allison* may somehow be distinguishable because "[w]alking in a parking lot is secondary to the parking lot's primary use." A person must be able to reasonably access his or her vehicle in order for a parking lot to be serviceable. The *Allison* Court explicitly recognized this. *Allison*, 481 Mich at 429. Finally, I note that this appeal solely involves the application of MCL 554.139(1)(a) and I therefore do not reach the question whether

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I would reverse and remand this case for entry of judgment in favor of defendant.

/s/ Patrick M. Meter

(…continued)

the staircase was "unreasonably dangerous," an inquiry related to a common-law premises liability claim. See, e.g., *Royce v Chatwell Club Apartments*, 276 Mich App 389, 391; 740 NW2d 547 (2007).